

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3738 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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UMRAVKHAN TAJKHAN PATHAN

Versus

DIRECTOR

Appearance:

MR IS SUPEHIA for Petitioner

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 26/12/96

ORAL JUDGEMENT

The petitioner who is a primary school teacher has moved this Court under Article 226 of the Constitution of India with a prayer to grant him selection grade with effect from 1st January 1973 instead of 1st April 1977 when it was granted to him. Vide notification of 16th September 1976 State of Gujarat created a selection grade in the pay scale of Rs.400-600 retrospectively from 1st January 1973 for the primary teachers and it was also provided in the said notification that 20 per cent of the total sanctioned posts of the primary teacher may be awarded the selection grade. Said notification did not provide as to how the selection grade was to be given to the primary teachers. The resolution of 13th October 1977 of the State Government laid down that the confidential reports of the teachers have to be looked into for the purpose of grant of selection grade and that such reports are to be taken into account up to the time when the case of grant of selection grade is considered and not the date when the selection is made applicable. The petitioner's case for grant of selection grade with effect from 9th January 1973 was refused as three years' confidential reports

which were required to be taken into consideration were not making him eligible to obtain the same as two years' confidential reports were good while third year's report was fair. Thereafter it appears that the Committee to consider the selection grade again met some where in the year 1981 and granted the selection grade with effect from 1st April 1977. It is the case of the petitioner that he should have been given selection grade with effect from 1st January 1973 and not with effect from 1st April 1977.

2 The above claim of the petitioner is based on the ground that the circular on which the selection committee relied on while considering the selection grade for the year January 1973 had not looked into the subsequent years' confidential reports which were, according to the petitioner, were rated good. It is also the case of the petitioner that while considering the petitioner for selection grade in the year 1981 keeping the above contentions in mind the Committee should have given the selection grade with retrospective effect from 1st January 1973. According to the petitioner, by not granting the selection grade with retrospective effect has created an anomaly inasmuch as his juniors in service are getting the selection grade with retrospective effect. This has created an anomaly inasmuch as his juniors in service are getting the selection grade with effect from 1.1.1973 while he is getting the same from 1.4.1977. It is also the case of the petitioner that the authority while refusing to grant the selection grade from 1.1.1973 has failed to consider the principle for grant of selection grade being seniority-cum-merit. In absence of any demerit the petitioner is entitled to selection grade with effect from 1.1.1973.

3 Though respondents are served, they have not chosen to file any affidavit-in-reply. However, Mr D.N. Patel, Asst. Government Pleader, instructed by Mr M.G. Doshit appears before this Court.

4 Mr Supehia, learned advocate for the petitioner, to substantiate his above contentions has mainly relied upon two judgments of this Court: one in case of Manubhai Parushottam Jani v. The District Education Officer in Letters Patent Appeal No.52 of 1981 decided on 9th September 1981 and secondly on a judgment in case of M.C. Jani v. State of Gujarat and ors. in Special Civil Application No.2931 of 1982 decided on 3rd December 1982. The said judgment is based on a judgement delivered in Special Civil Application No.437 of 1982 in the case of A.A.Shaikh, Circle Police Inspector v. State

of Gujarat, decided on 22nd April 1982.

5 In the case of *Manubhai Parushottam Jani* (supra), the Division Bench of this Court has held as under:

"Two resolutions pertaining to the grant of selection grade were brought to our notice. The first was the resolution dated April 24, 1956. The next was the resolution dated October 13, 1977. On combined reading of these two resolutions it appears that a primary teacher would be entitled to be awarded selection grade provided that in his confidential remarks his rating is 'good' for three consecutive years. In case he has obtained two 'good' ratings and one 'fair' rating during the course of preceding three years, the committee has to watch his performance in the subsequent year. If in the subsequent year his rating is 'good' he is entitled to be awarded selection grade. This is the basic scheme outlined in the resolution dated April 24, 1956 which has been modified slightly by the resolution dated October 13, 1977. The modification is to the following extent: If the question of awarding selection grade arises after October 13, 1977, with retrospective effect, the relevant years for the purpose of ascertaining the remarks would be the three years immediately preceding the date on which the question of granting selection grade arises and not the three years immediately preceding the year from which the teacher concerned became eligible for being awarded the selection grade by virtue of the decision to grant selection grade retrospectively. On a combined reading of these two resolutions, the competent authority was required to take into consideration the remarks pertaining to the three years immediately preceding the date on which the Selection Committee met."

6 Relying on this decision of this Court, Mr Supehia contended that when the case of the petitioner was considered for grant of selection grade with effect from 1st January 1973, instead of refusing the selection grade to the petitioner the authority should have waited for one year more to see whether the subsequent year's rating is 'good' or 'fair.' According to the petitioner, advocate Mr Supehia the subsequent year's rating was a good one and in view of the observations in the case of *Mr M.P. Jani* (supra), the petitioner had become entitled

to the selection grade. When this Court asked Mr Supehia as whether the Committee for considering the cases of the petitioner and others for promotion is meeting every year or not, he was not able to reply the same. It appears from the record of this case that the Committee for considering the cases of the petitioner and others met somewhere in the year 1977-78. At that time the Committee has considered the confidential reports of the petitioner for the years 1974-75, 1975-76 and 1976-77. It is the case of the petitioner that the confidential reports of the petitioner in the year 1977-78 was rated as a good one and therefore he had become entitled to the selection grade. But when the committee met in the year 1977-78 he had not with him the confidential report for the year 1977-78 and had decided his case without the same. Thereafter the selection committee met in the year 1981. It is the case of the petitioner that after 1977-78 the Selection Committee had met again in the successive years and had with them the confidential reports of the petitioner for the successive years. In this view of the fact which emerges from the record the selection committee met somewhere first in the year 1977-78 and then in the year 1981-82 it can be said that the selection committee is not meeting every year. Thus, when the selection committee met in the year 1977-78, even if I accept interpretation put by the learned advocate to the judgment in the case of M.P. Jani (supra) was not there, and what they have considered cannot be said to be contrary to the circulars issued by the Government and the provisions of law prevailing then.

7 The case of the petitioner that thereafter the selection committee met in the year 1981-82 when it had with it the confidential reports for the years 1978-79, 1979-80 and 1980-81 and they have granted the selection grade with effect from 1.4.1977 as all the confidential reports made the petitioner eligible and entitled to the selection grade. If we read the averments of the petitioner in paragraph 10 and the order in appeal by the petitioner of 12th April 1985 it is clear that the selection committee has taken into consideration the confidential reports of three years preceding the date when they are considering the case of the petitioner for grant of selection grade and therefore they have acted in compliance with the observation made by the Division Bench of this Court in case of M.P. Jani (supra).

8 Thus, I do not find any substance in the contentions of the petitioner that the Committee should have waited for one year before deciding the matter and should have taken into consideration the confidential

report of the subsequent year.

9 It is the case of the petitioner that his juniors are given selection grade while he got selection grade subsequent to them and this creates an anomaly which is violative of Article 14 of the Constitution of India. It is not the case of the petitioner that his juniors who were given selection grade or it is not his case that though their ratings were not good, yet they are given the selection grade. If the juniors are found competent and if their ratings of the confidential reports entitled them to the selection grade, it cannot be said that the grant of selection grade to the juniors earlier in time than that of the petitioner causes infraction of Article 14 of the Constitution of India. Thus, if juniors are getting the selection grade on their merits and if the petitioner got the selection grade subsequently, it cannot be said that the juniors are marching over the petitioner. It is the principle of service jurisprudence that one who stands on merits is entitled to go ahead and accordingly juniors had got selection grade prior to the petitioner. Thus, there is no substance in this contention of the petitioner that grant of selection grade to the juniors first and grant of selection grade to the petitioners later causes breach of Article 14 of the Constitution of India.

10 It is the case of the learned advocate for the petitioner that for considering grant of selection grade, principle of seniority-cum-merit is required to be applied. It is not the case of the petitioner that any of the juniors to the petitioner have been considered for selection grade prior to the consideration of the petitioner. After the petitioner could not secure the selection grade the juniors were considered for the same and as the juniors became entitled their cases were considered and were granted selection grade. Thus, there is no breach of seniority-cum-merit principle in the instant case. The petition is therefore liable to be rejected. It is rejected accordingly. Rule is discharged with no order as to costs.
